

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MARK ANTHONY GARCIA, )  
                          )  
                          )  
Plaintiff,             )  
                          )  
                          )  
-vs-                   )       Case No. CIV-11-558-F  
                          )  
JOHN WHETSEL, et al., )  
                          )  
                          )  
Defendants.           )

**ORDER**

United States Magistrate Judge Doyle W. Argo issued a Report and Recommendation on July 13, 2011, wherein he recommended that plaintiff's action pursuant to 42 U.S.C. § 1983 against defendant, John Whetsel, be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e) on the basis of plaintiff's failure to allege any personal action on defendant's part. Magistrate Judge Argo further recommended that plaintiff be required to file an amended complaint on or before August 15, 2011, in which plaintiff identifies the "John Doe" defendant. In the Report and Recommendation, Magistrate Judge Argo advised plaintiff of his right to file an objection by August 2, 2011 and that failure to timely object to the Report and Recommendation waives the right to appellate review of the factual and legal issues therein contained.

To date, plaintiff has not objected to the Report and Recommendation and has not sought leave for an extension of time to file an objection. With no objection to the Report and Recommendation being filed, the court accepts, adopts and affirms the Report and Recommendation save and except the August 15, 2011 date for filing an amended complaint. The court shall grant plaintiff until September 7, 2011 in which to file an amended complaint identifying the "John Doe" defendant.

Accordingly, the Report and Recommendation issued by United States Magistrate Judge Doyle W. Argo on July 13, 2011 (doc. no. 7) is **ACCEPTED**, **ADOPTED** and **AFFIRMED** as stated in this order. Plaintiff's action against defendant, John Whetsel, is dismissed without prejudice under 28 U.S.C. § 1915(e) for failure to allege any personal action on the part of defendant. Plaintiff is required to file an amended complaint by September 7, 2011 identifying the "John Doe" defendant. Failure of plaintiff to file an amended complaint shall result in the dismissal without prejudice of plaintiff's action pursuant to 28 U.S.C. § 1915(e) and Rule 41(b), Fed. R. Civ. P.<sup>1</sup>

DATED August 17, 2011.



---

STEPHEN P. FRIOT  
UNITED STATES DISTRICT JUDGE

11-0558p001.wpd

---

<sup>1</sup> Rule 41(b) permits the court to dismiss actions sua sponte for a plaintiff's failure to comply with a court's order. Olsen v. Mapes, 333 F.3d 1199, 1204 n. 3 (10<sup>th</sup> Cir. 2003).